IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs July 17, 2002

STATE OF TENNESSEE v. JOE E. HUNTER

Appeal from the Criminal Court for Davidson County
No. 2000-B-943 Seth Norman, Judge

No. M2001-01877-CCA-R3-CD - Filed September 26, 2002

A Davidson Count Criminal Court jury convicted the defendant, Joe E. Hunter, of the Class A misdemeanor of torturing an animal. *See* Tenn. Code Ann. § 39-14-202(a)(1) (1997). On appeal, the defendant claims that the evidence was insufficient to support the conviction. We disagree and affirm.

Tenn. R. App. P. 3; Judgment of the Criminal Court Affirmed.

JAMES CURWOOD WITT, JR., J., delivered the opinion of the court, in which THOMAS T. WOODALL and ALAN E. GLENN, JJ., joined.

George Thompson, Nashville, Tennessee, for the Appellant, Joe E. Hunter.

Paul G. Summers, Attorney General & Reporter; Jennifer L. Bledsoe, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Pamela Anderson, Assistant District Attorney General, for the Appellee, State of Tennessee.

OPINION

The defendant was convicted of "intentionally or knowingly . . . [t]ortur[ing] . . . an animal." Tenn. Code Ann. § 39-14-202(a)(2) (1997). As pertinent to the conviction offense, "'torture' means every act . . . whereby *unreasonable* physical pain . . . is caused." *Id.* § 39-14-201(4) (1997) (emphasis added). The conviction results from allegations that the defendant beat a dog outside his Mercury Court apartment on November 4, 1999. The defendant concedes that he struck the dog in question but denies that any pain inflicted was unreasonable. Thus, the defendant asserts that the evidence is insufficient because it is devoid of any facts that demonstrate the infliction of unreasonable pain.

We begin by reciting familiar rules that govern our review of a claim of insufficient evidence. It is well established that a jury verdict, approved by the trial judge, accredits the testimony of the witnesses for the state and resolves all conflicts in favor of the theory of the state.

State v. Hatchett, 560 S.W.2d 627, 630 (Tenn. 1978); *State v. Townsend*, 525 S.W.2d 842, 843 (Tenn. 1975). On appeal, the state is entitled to the strongest legitimate view of the evidence and all reasonable or legitimate inferences which may be drawn therefrom. *State v. Cabbage*, 571 S.W.2d 832, 836 (Tenn. 1978).

Moreover, a verdict against the defendant removes the presumption of innocence and raises a presumption of guilt on appeal. *State v. Grace*, 493 S.W. 2d 474, 476 (Tenn. 1973); *Anglin v. State*, 553 S.W.2d 616, 620 (Tenn. Crim. App. 1977). The defendant has the burden of overcoming this presumption. *State v. Brown*, 551 S.W.2d 329, 331 (Tenn. 1977).

Most significantly, when the sufficiency of the evidence is challenged, the relevant question for an appellate court is whether, after reviewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Tenn R. App. P. 13; *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 2782 (1979); *see also, State v. Williams*, 657 S.W.2d 405 (Tenn. 1983). This rule applies to findings based on both direct and circumstantial evidence. *State v. Thomas*, 755 S.W.2d 838, 842 (Tenn. Crim. App. 1988). Circumstantial evidence alone may be sufficient to convict one of a crime. *State v. Boling*, 840 S.W.2d 944, 947 (Tenn. Crim. App. 1992).

In the light most favorable to the state, the evidence showed that the defendant lived in apartment 186 at Mercury Court. His apartment door was apparently accessed by a common entrance to a grouping of apartments 184 through 187.

In the days preceding November 4, 1999, Mercury Court residents had seen a small black dog lingering about the premises. An employee of the apartment complex testified that the dog stayed outside the passageway to apartments 184 through 187 and that if the employee tried to go toward the passageway, the dog would "snap" at him; however, the employee was not afraid of the dog and had chased him away three times. The employee believed that, despite a no-pets policy at Mercury Court, one of the residents of the apartments accessed by the passageway was feeding the dog. A resident also testified that the dog had snarled at him.

Around midday on November 4, 1999, two of the residents heard a dog yelping. One of them opined that a dog was "crying like someone was trying to kill it," and the other witness testified that she heard a dog yelping "like he was in pain." Both witnesses looked out to see the defendant striking the black dog with a stick or rod, described by one witness as a metal rod about two and one-half feet long. The dog was lying in an elevated flower bed. One witness testified that, after hearing the initial yelps, he observed the defendant hitting the prone, motionless dog at least six times with a "golf swing-type motion." The other witness opined that she saw the defendant strike the dog about twenty times. Neither witness observed the prelude to the yelping.

A resident called the police to report cruelty to an animal. Ultimately, animal control officers arrived and found the dog, still in the flower bed, trembling, "obviously in pain." It did not try to bite the officers and showed no sign of aggression. The officers took the dog to the Metro

Animal Services facility. There, it was examined and treated by a veterinarian, who found that the 30-pound, six-month-old dog had recent bruising caused by blunt force trauma. Although the dog had no broken bones, punctured skin, or permanent injuries, the veterinarian concluded that it "was extremely painful over its back lumbar area" and its abdomen was "very guarded, very painful." When she raised the dog's tail, it would "cry out in pain."

She treated the dog for the pain and retained it in the facility, pending adoption. The dog stayed in the facility for about a year before being adopted. During this time, the dog did not bite anyone and did not behave aggressively.

The defendant testified that, when he came home on the morning of November 4, 1999, the dog was sitting in the passageway to his apartment. When the defendant reached for the door, the dog "started snapping." The defendant threw a rock at the dog and chased it away. Later in the day, and after having a few beers, the defendant attempted to leave his apartment when he encountered the dog blocking the doorway. Being "afraid [he] was going to be attacked," the six-foot, two-inch tall, 210-pound defendant retrieved a "billy club" from his apartment. He "tapped' the dog three times on the tail, and the dog went to the flower bed, where the defendant "tapped" him three more times.

He testified he was not trying to hurt the dog and was not angry; however, on cross-examination, he admitted that he "[e]vidently" was angry about one of his neighbors violating the no-pets policy by feeding the dog. He claimed that the residents and apartment manager had a grudge against the defendant because the defendant was a "loner individual."

The defendant's claims of self-defense notwithstanding, we conclude that the evidence is sufficient to support the conviction. The state clearly showed that the defendant inflicted pain on the dog, and we hold that the evidence showed that the defendant did so unreasonably. We realize that the defendant offered the only proof about why he began striking the dog. No other witness observed the beginning of the episode. Nevertheless, even if the jury accredited the defendant's self-defense testimony, which it was certainly free not to do, the affirmative evidence showed that the defendant continued to beat the dog after it moved away from the door to a location that would accommodate the defendant's leaving his apartment. The defendant, who may have been angry about the dog's presence, struck multiple, "golf swing-type" blows after the dog lay prone and motionless. The jury could reasonably have found that this activity equated to the infliction of "unreasonable physical pain."

Accordingly, the judgment of the trial court is affirmed.

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JAMES CURWOOD WITT, JR., JUDGE